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February 12, 2021

Via ECF

Honorable Loretta A. Preska
United States District Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

Defendants' time to Answer or otherwise move with respect to the complaint is adjourned sine die. SO ORDERED.

 2/12/2021

Re: SEC v. Keith Berman and Decision Diagnostics Corp., 20 Civ. 10658 (LAP)

Dear Judge Preska:

We write on behalf of the defendants to advise the Court of anticipated motions that we have learned of and which may affect the proceedings in this case. Specifically, the Justice Department, which is prosecuting defendant Berman in a parallel criminal case in the United States District Court for the District of Columbia, has advised us that it intends to move to intervene in this case and, if it permitted to intervene, then to move for a stay of discovery until the conclusion of the criminal case. We have advised the Government that we consent to these motions. We understand the SEC will not oppose. We have also been advised that the Government intends to file its motions before February 26, 2021, the date by which the defendants are to Answer or otherwise move with respect to the SEC Complaint.

Consequently, we request that the Court adjourn defendants' time to Answer or otherwise move with respect to the SEC Complaint until such time as the Court rules on the anticipated motions by the Department of Justice. If a stay is entered, we respectfully request that defendants' time to Answer the Complaint or file other pleadings directed to it be adjourned until any such stay is lifted. This matter appears on all fours with the Court's recent ruling in *SEC v. El-Khoury*, 19 Civ. 9744 (LAP) (S.D.N.Y. Jan. 26, 2021) (stay of discovery entered before defendant Answered Complaint).

The Parallel Proceedings

By an Indictment dated December 15, 2020, unsealed on December 17, 2020, Mr. Berman has been charged with securities fraud, in violation of 15 U.S.C. Sections 78j and 77ff, C.F.R. Section 240.10b5, and making a false statement, in violation of 18 U.S.C. Section 1001.

On December 17, 2020, Mr. Berman's initial appearance on the Indictment took place in the United States District Court for the Central District of California. He lives and works in Los Angeles. He was released on bond by that Court. Subsequently, the case was transferred for all purposes to the United States District Court for the District of Columbia where the Indictment issued and where the Department of Justice is prosecuting the case. The case is assigned to the Honorable Trevor N. McFadden. On January 21, 2021, Mr. Berman was arraigned in that district. On January 26, 2021, Judge McFadden held an initial status conference. The Court has scheduled a second status conference for February 24, 2021. All proceedings in both courts were conducted remotely. The Government has proposed a July 2021 trial date subject to the full resumption of jury trials in that district. In a submission to Judge McFadden, the Government described the criminal case and the SEC case as arising from "parallel investigations."

On December 17, 2020, the SEC filed a Complaint in the United States District Court for the Southern District of New York where it was then assigned to Your Honor. The SEC action is based on the same transactions and occurrences as the Indictment. The Complaint charges both Mr. Berman and Decision Diagnostics Corporation ("DECN") with securities fraud in violation of Section 10(b) of the Securities Exchange Act of 1934. The Complaint describes Mr. Berman as "DECN's sole director and...DECN's President since 2006 and its Chief Executive Officer since 2017. From August 2006 through September 2017, Berman was DECN's Principal Executive Officer. (Compl. par. 6.) In short, Mr. Berman is the sole officer and director of DECN, a publicly traded company incorporated in the State of Nevada.

Conclusion

For the foregoing reasons, counsel for Mr. Berman and DECN request that this submission be treated by the Court either as a letter motion adjourning defendants' time to Answer or otherwise move with respect to the SEC Complaint, or alternatively, as a request for a pre-motion conference.

Respectfully submitted,

/s/Walter P. Loughlin

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cc: Christopher Fenton (Via Email)